



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Astrophysics Research Corporation  
File: B-232028  
Date: October 4, 1988

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### DIGEST

1. Agency determination to reject a proposal as technically unacceptable is proper where the proposal did not meet the solicitation requirement that offerors demonstrate that the equipment proposed had previously been used in a successful operation.
2. Protest alleging apparent defects in a request for proposals is untimely where it was not filed prior to the closing date for receipt of initial proposals.

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### DECISION

Astrophysics Research Corporation protests the award of a contract to Siefert X-Ray Corporation under request for proposals (RFP) No. N00102-88-R-0224, issued by the Navy for two industrial X-ray machines used for testing welds on nuclear powered submarines at the Naval Shipyard in Portsmouth, New Hampshire. Astrophysics contends that its proposal was improperly rejected. We deny the protest in part and dismiss it in part.

Five offerors responded to the RFP by the February 11, 1988, closing date. The Navy conducted discussions with all offerors and the last round of best and final offers were received on June 2. Astrophysics was the low offeror at \$101,990. Siefert, the awardee, was second low at \$109,250. Astrophysics' proposal was rejected by the agency as technically unacceptable because Astrophysics was not able to show that the equipment that it offered had been in use performing radiography to the requirements of NAVSEA standard 250-1500-1 as required by the RFP. In this regard, the Navy points out that while one of the several users listed by Astrophysics did perform radiography to the specified standard it used an Astrophysics unit with a large

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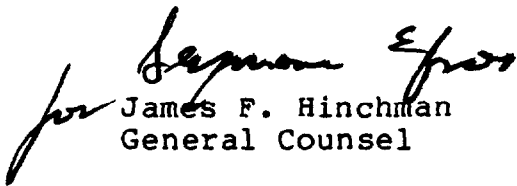
focus of 3.5 by 3.5mm rather than 4.0 by 4.0mm as specified in the RFP.

While insisting that the agency was biased in its evaluation, Astrophysics does not dispute the agency's conclusion that it failed to list a user of its equipment as offered with the 4.0 by 4.0mm large focus. It appears to be the protester's position that the RFP requirement that the equipment have a large focus of 4.0 by 4.0mm was improper because that large size focus does not produce radiographs with as high resolution as those produced with the Astrophysics unit which normally uses a 3.5 by 3.5mm large focus.

We think that Astrophysics' proposal was properly rejected as technically unacceptable because it did not meet the solicitation requirement that offerors demonstrate that the equipment offered had been previously used in a successful operation. Since the protester does not contest the agency's conclusion in this regard and because there is nothing in the record which shows that the rejection of Astrophysics proposal was otherwise the result of bias against the protester, we have no basis upon which to object to the agency's action here.

Moreover, to the extent that the protester is complaining about the solicitation requirement for a 4.0 by 4.0mm focus spot, the argument is untimely and will not be considered. Our Bid Protest Regulations provide that a protest based on alleged improprieties in a solicitation that are apparent prior to the closing date for receipt of initial proposals must be filed prior to the closing date. 4 C.F.R. § 21.2(a)(1) (1988). Astrophysics did not protest the inclusion of this requirement until its proposal was rejected.

The protest is denied in part and dismissed in part.

  
James F. Hinchman  
General Counsel